

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Competitive Bidding Procedures)	AU Docket No. 13-53
for Auction 902 and Certain)	
Program Requirements)	

**COMMENTS OF
PA MAKANI LLC dba SANDWICH ISLES WIRELESS**

In Public Notice DA 13-323 dated March 29, 2013, the Wireless Telecommunications and Wireline Competition Bureaus seek comment on auction procedures and certain related programmatic issues, including the following: identifying geographic areas eligible for support; determining the basic auction design, whether and how to aggregate eligible areas for bidding, and how awardees will be selected, and establishing certain other bidding procedures, information disclosure procedures, and methodologies for calculating auction and performance default payments.

Pa Makani LLC, dba Sandwich Isles Wireless (SIW), is a Tribal ETC that provides wireless services to Hawaiian Home Lands ¹ and is pleased to have the opportunity to comment on these areas under discussion for the Tribal Mobility Fund Phase I designated Auction 902.

¹ Tribal areas held in trust for Native Hawaiians by the State of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920 July 9, 1921, 42 Stat. 108, et. seq., as amended.

I. FCC MUST FULFILL THE ROLE OF FACILITATOR FOR TRIBAL LANDS

In the FCC's own National Broadband Plan, Section 8, the underserved status of Tribal lands is well documented, both for voice and broadband services. It follows then that the purpose and goal of FCC Auction 902 should be to facilitate the use of spectrum and wireless communications technology to meet the identified wireless communications needs of the "Tribal community," whether American Indian, Alaska Native, or Native Hawaiian residing on Tribal lands.

A. Participating Bidders Should Have Native Group Approval

The FCC Public Notice echoes the FCC's USF/ICC Transformation Order regarding Tribal Engagement and the importance of consulting with Tribal officials. However, the Notice only requires a consultation with the Tribe/Native Group after an ETC has won the bid. This would seem to defeat the purpose of consulting with the Tribal officials. If the ETCs intending to participate in Auction 902 have not performed a needs assessment and deployment planning with the Tribal community and its anchor institutions; if the ETCs have not prepared a feasibility and sustainability plan with the Tribal community; if the ETCs have not worked with the Tribal leaders to understand the best way to market services in a culturally sensitive manner; if the ETCs are not aware of the right of way processes, land use permitting, facilities siting, environmental and cultural preservation processes, and if the ETCs are not aware of Tribal business and licensing requirements, it would be impossible for the ETCs to provide an informed bid in the reverse auction process. Without the Tribal leadership pre-approval, the FCC auction process would require the native community to blindly accept the winner as their provider, regardless of past experience with the winning bidder or Tribal approval of another wireless provider for their lands. It therefore seems critical that any ETC bidding for a Tribal Mobility

Fund award for the purpose of serving Tribal lands must consult with the Tribal leaders and obtain their approvals prior to bidding in this reverse auction.

It is incongruent with the Commission's own Tribal Engagement guidelines that the Notice requires the bid winners to notify "tribal governments" of their success after they have won the bid. SIW proposes that the representatives of the Native groups be consulted by wireless ETCs prior to bidding, and that the bidding carrier obtain the Native group's approval to participate in the Auction 902 bid process. In the role of facilitator, the FCC should not conduct a Tribal Mobility Fund Phase I auction with the Native groups in a secondary "bystander" role.

The FCC should incentivize the Native groups and their selected wireless carriers to participate in an open and pragmatic auction process. Such a process would include the Native group and its selected wireless carrier contracting with a professional engineer to design a wireless system specific to the communications needs of the Native community, as identified by the leadership of the Native group. The bidding wireless carrier would then submit, as part of its bid documentation, the network design and equipment specifications, certified by the professional engineer, which would capably serve the Native community. Requiring these steps as part of the bid submission process should be one criterion used to qualify the bidding wireless carrier as eligible to participate in Auction 902.

B. Irrevocable Letter of Credit Should Not Be Required

The Commission should not require the wireless carrier approved by a Tribe/Native group to obtain an irrevocable Letter of Credit (LOC) to participate in Auction 902. If the approved carrier has done its due diligence with the leadership of the Native group and submits a winning bid to construct a wireless network and provide at least 3G service, then no LOC should

be required. However, the FCC Notice does require a LOC from the bid winner, even though if the SIW position is upheld, it worked with the Tribal/Native leadership during the network design phase to gain the tribe's approval and submit a comprehensive and credible winning bid.

This is an aspect of the FCC auction process that proves to be counterproductive for Tribal lands. Obtaining a LOC is an onerous requirement for all small wireless carriers, and particularly for tribally owned wireless carriers. The FCC has recognized that tribal areas have limited services and significant broadband infrastructure deployment and connectivity challenges. In fact, the Tribes/Native groups themselves cannot even obtain such Letters of Credit, and neither can the small wireless carriers that would likely construct and operate wireless networks on Tribal lands. A costly LOC eliminates potential Tribal ETC's from bidding to build-out their own Tribal lands and serve their own Tribal communities.

Requiring Tribal ETCs to furnish an irrevocable, "stand-by" Letter of Credit (LOC) puts a burden on the ETC that very probably will eliminate Tribal ETCs from bidding. For a financial institution to provide a LOC to a Tribal ETC, that ETC must be credit worthy for the entire amount of the LOC. The purpose of this mobility auction is to provide the Tribal ETC with the funding necessary to commence offering broadband services. The ETC is participating in the mobility auction for the very reason that it does not have access to funds and would have a difficult time qualifying as credit worthy for those funds. Although the ETC would not be seeking a loan, it must still be deemed able to repay any funds drawn on an approved LOC. For many years RUS has funded construction projects for tribal and rural telecommunication companies and yet have not required a LOC for some of these very reasons.

Likewise, if a bond or deposited funds were required in advance of the bid without the commitment of the FCC to fund the needed broadband infrastructure, most Tribal ETC's would not be able to participate in the reverse auction. If, on the other hand, the Tribal ETC were to have the winning bid without an LOC and were then unable to procure the LOC, the Tribal ETC would be in default according to the FCC auction rules and would be penalized. For all of the above stated reasons, SIW would request that the FCC remove the requirement of providing a LOC after winning the bid, and not require a bond or deposit of funds prior to participating in the auction.

It is the opinion of SIW that, ironically, AT&T, Verizon, and other large price cap carriers have larger and more insurmountable barriers that likely prohibit them from effectively participating in Auction 902. Even though these carriers can obtain irrevocable Letters of Credit, they have demonstrated that often times they cannot commit the necessary internal resources to engineer and construct networks that adequately serve Tribal lands. From a large, publicly traded corporate vantage point, it simply does not make sense for these carriers to serve remote and isolated Tribal lands. The limited markets and perceived risk factors present do not provide sufficient economic reward for price cap carrier management and shareholders to approve corporate participation. Therefore, only in an unusual circumstance would one expect the Native group seeking a Tribal Mobility Funds award through Auction 902 to approach the FCC with a large, price cap carrier.

The purpose of the LOC, to insure that funds are used correctly and the towers are completed, can be met through disbursement requirements, i.e. funds are released in tranches after proof of construction.

C. All Carriers Must Use the Tribal ETC Infrastructure

If a Tribe/Native group has its own wireless ETC, then any other carrier seeking approval to provide wireless services for the Tribal community should agree to certain additional conditions to participate in FCC Auction 902. One of these very important conditions should be that the non-Tribal ETC must utilize the Tribal ETC infrastructure, wireless or wireline, via contract or tariff, to complete its network and provide transport out to the “world,” including the Internet backbone. During the pre-bid consultation period, non-Tribal ETCs will be made aware of existing infrastructure owned by the Tribal ETC. Non-Tribal ETCs will need to include charges for access to this existing infrastructure for their bids to be complete.

If a non-Tribal ETC is the winning bidder, it is vital that it work directly with the Tribal ETC for interconnection with existing infrastructure. The existing ETCs infrastructure should not be duplicated or bypassed by an incoming carrier’s network. The high embedded costs of building critical infrastructure to serve Tribal lands should be supported, not uneconomically bypassed, by other carriers that desire to provide communications services on Tribal lands, including HHL. Uneconomical bypass of existing backbone infrastructure on Tribal lands places an unnecessary burden on American ratepayers that pay into the universal service fund for the purpose of supporting high-cost infrastructure in rural America, including Tribal lands.

D. More Granular Data Is Needed to Identify Existing 3G Coverage

In the entire State of Hawaii, the Commission’s Notice has identified only 23 Census Blocks and three Tribal Lands as “Potentially Eligible Census Blocks.” SIW has identified additional Tribal Lands that meet the Commission’s criteria – with population above zero and without 3G coverage.

For instance, Keanae and Wailua on the island of Maui consists of 14 census blocks, four of which are populated [block numbers 1036, 1064, 1102, 1103]. Those four census blocks do not have the required 3G coverage and should be added to the Tribal Mobility Fund Phase I.

E. A Single-Round Auction Should Be Conducted by the Commission

The Notice discusses two types of auction methodologies: Single-Round and Multiple-Round Auctions. SIW concurs with the Commission that a Single-Round Auction would be simple and quick. A single round would particularly be appropriate if bidders were required to gain the approval of Tribal leadership to participate in the auction. A Single-Round Auction will also allow the ETCs to submit bids based on their internal cost structures, rather than reacting to the bids of others.

II. CONCLUSION

The purpose and goal of FCC Auction 902 should be to facilitate the use of spectrum and wireless communications technology to meet the identified wireless communications needs of the “Tribal community,” whether American Indian, Alaska Native, or Native Hawaiian.

It therefore seems critical that any ETC bidding for a Tribal Mobility Fund award on Tribal lands must consult with Tribal/Native group leaders about their communications needs. The Notice requires the bid winners to notify “tribal governments” of their success only after they have won the bid. SIW proposes that the leadership of Tribes/Native groups be consulted by wireless ETCs prior to bidding, and that the bidding carrier obtain the Native group’s approval to participate in the Auction 902 bid process. In the role of facilitator, the FCC should not conduct a Tribal Mobility Fund Phase I auction with the Native groups in a secondary “bystander” role.

It would be unreasonable to require the wireless carrier approved by a Native group to obtain an irrevocable Letter of Credit (LOC) as part of the FCC's auction process. The presumption is that the approved carrier has done its due diligence with the Native group and is prepared to submit a winning bid to construct a wireless network and provide at least 3G service. SIW requests that the FCC remove the requirement of providing a LOC, and not require a bond, or a deposit of funds prior to or after submitting a winning bid in Auction 902.

A very important condition should be added to the auction process, and that is a non-Tribal ETC must utilize the Tribal ETC infrastructure, wireless or wireline, via contract or tariff, to complete its network. The high embedded costs of building critical infrastructure to serve Tribal lands should be supported, not uneconomically bypassed, by other carriers that desire to provide communications services on Tribal lands. Uneconomical bypass of existing backbone infrastructure on Tribal lands places an unnecessary burden on American ratepayers that pay into the universal service.

And finally, more granular data is needed to identify 3G coverage that exists today, so "Potentially Eligible Census Blocks" can be accurately identified. And the Commission would be well-advised to use a Single-Round Auction methodology for Auction 902.

Respectfully submitted,
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